

89-1919

①

No. _____

Supreme Court, U.S.
FILED

JUN 7 1990

JOSEPH F. SPANIOLO
CLERK

In The
Supreme Court of the United States
October Term, 1989

—◆—
TERRY E. BARTH,

Petitioner,

vs.

JULES SILVER,

Respondent.

—◆—
On Petition For A Writ Of Certiorari
To The Supreme Court Of Connecticut

—◆—
PETITION FOR A WRIT OF CERTIORARI

—◆—
JOHN R. WILLIAMS
WILLIAMS AND WISE
51 Elm St., Suite 409
New Haven, CT 06510
(203) 562-9931
Counsel for Petitioner



QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires some statement of reasons when a state court orders the forfeiture of real property as a disciplinary sanction for delay in responding to interrogatories in a civil case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	6

TABLE OF AUTHORITIES

Page

CASES:

Boddie v. Connecticut, 401 U.S. 371 (1971)	5
Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)	4
Horton v. Irving, 553 F.Supp. 213 (N.D.Ill. 1982).....	5
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)	5
Schiavone v. Schiavone, 18 Conn. App. 825, 559 A.2d 1192 (1989)	3
Serafin v. City of Lexington, 547 F.Supp. 1118 (D.Neb. 1982)	5
United States ex rel. Johnson v. Chairman of New York State Bd. of Parole, 500 F.2d 925 (2d Cir. 1984).....	5



No. _____

In The
Supreme Court of the United States
October Term, 1989

TERRY E. BARTH,

Petitioner,

vs.

JULES SILVER,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

Terry E. Barth, Petitioner, requests that a writ of certiorari issue to review the judgment of the Connecticut Supreme Court entered April 12, 1990, refusing to review the decision of the Connecticut Appellate Court entered on February 8, 1990.

OPINION BELOW

The opinion of the Connecticut Supreme Court is officially reported at 215 Conn. 803 (1990). It is reproduced in the Appendix to this Petition beginning at App.

p. A-1. The underlying opinion of the Connecticut Appellate Court is officially reported at 20 Conn. App. 827 (1990). It is reproduced in the Appendix to this Petition beginning at App. p. A-2.

JURISDICTION

The judgment of the Connecticut Supreme Court, declining to review the judgment of the Connecticut Appellate Court, was entered on April 12, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

1. The Fourteenth Amendment to the United States Constitution provides in relevant part: "Nor shall any State deprive any person of life, liberty or property without due process of law. . . ."

STATEMENT OF THE CASE

This case involves the harshest disciplinary sanctions in a discovery dispute ever imposed in a reported Connecticut case. Those sanctions, consisting of the entry of a default judgment forfeiting the Petitioner's family home in a foreclosure action, were imposed without any statement of reasons or consideration of lesser penalties as a sanction for a comparatively brief delay in answering written interrogatories.

This was a foreclosure action based upon a judgment entered in an earlier proceeding in another Court. The action originally had been brought against several defendants, one of whom was the debtor in a bankruptcy matter then pending in the United States District Court. As a result, the action was automatically stayed pursuant to the provisions of 11 U.S.C. §362a. While the stay was in effect, interrogatories were served upon the defendant Terry E. Barth. Her attorney believed he had filed objections to those interrogatories with the Court, but for reasons never explained those objections did not reach the Court file.

The bankruptcy stay was lifted when the plaintiff dropped the bankrupt defendant from his action at the end of May, 1989. Less than thirty days later, and without undertaking any effort to obtain disclosure without judicial intervention, the plaintiff moved for the imposition of a variety of disciplinary sanctions ranging from an order compelling discovery all the way up to default. On July 10, 1989, without any explanation whatever, the Connecticut Superior Court granted the harshest possible disciplinary sanction – entry of a default. Ms. Barth moved to reopen the default, but the Court proceeded to enter judgment of foreclosure without even considering the motion to reopen. Subsequently, that motion was denied without any statement of reasons.

On appeal, the Connecticut Appellate Court affirmed the entry of judgment and the denial of the earlier motion to reopen in a *per curiam* opinion which offered no explanation whatever for its action. That opinion cited a single case – *Schiavone v. Schiavone*, 18 Conn. App. 825, 559 A.2d 1192 (1989). *Schiavone*, however, itself was a summary

affirmance which offered no explanation or statement of reasons. Arising in the context of pretrial motions in a divorce case, it had no apparent relevance to the issues before the Appellate Court.

Ms. Barth moved for reconsideration by the Appellate Court relying entirely upon the Due Process Clause of the Fourteenth Amendment because of the consistent failure of the Courts to offer any explanation for thus depriving her of her real property. That motion also was denied.

Ms. Barth thereupon petitioned the Connecticut Supreme Court to certify the appeal, relying again upon her Fourteenth Amendment due process right to a statement of reasons for the forfeiture of her property. Again relief was denied, again with no statement of reasons.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT REQUIRES THAT REAL PROPERTY CANNOT BE FORFEITED AS A DISCIPLINARY SANCTION IN A CIVIL ACTION WITHOUT SOME STATEMENT OF REASONS BY THE COURT

This Court has long held that it is "the root requirement" of Fourteenth Amendment due process that there be no deprivation of an individual's liberty or property rights without notice, an opportunity to be heard and a statement of reasons, all appropriate to the nature of the case and the liberty or property interests involved. *E.g., Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542

(1985); *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The lower federal courts likewise have consistently imposed a requirement that there be some form of explanation offered, appropriate to the case, when either property or liberty interests are terminated. *E.g.*, *United States ex rel. Johnson v. Chairman of New York State Bd. of Parole*, 500 F.2d 925 (2d Cir. 1984); *Horton v. Irving*, 553 F.Supp. 213 (N.D.Ill. 1982); *Serafin v. City of Lexington*, 547 F.Supp. 1118 (D.Neb. 1982).

The punitive default sanction entered in this case requires the sale by foreclosure of the plaintiff's family home to satisfy a debt which, although not insubstantial, represents less than five percent of the appraised value of the property. The offense, if such it was, that occasioned the Court order involved only a comparatively short delay in answering a small number of written interrogatories. That delay, in turn, was occasioned by the confusion of the Petitioner's trial attorney who thought he had filed the appropriate documents but apparently had not done so. The penalty imposed was greater than that ever previously imposed in any reported Connecticut case for a comparable dereliction. Yet all of this was accomplished without any explanation whatever from either the trial Court or the higher Courts which reviewed the matter on direct appeal.

This case affords an excellent opportunity to resolve definitively whether the state courts have some minimal obligation to provide a statement of reasons before depriving litigants of their real property for disciplinary reasons.



CONCLUSION

For the reasons stated above, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

JOHN R. WILLIAMS
51 Elm St., Suite 409
New Haven, CT 06510
(203) 562-9931
Attorney for Petitioner

No. _____

In The
Supreme Court of the United States
October Term, 1989

TERRY E. BARTH,

Petitioner,

vs.

JULES SILVER,

Respondent.

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX TABLE OF CONTENTS

	PAGE
Decision of Connecticut Supreme Court in Jules Silver v. Terry E. Barth, 215 Conn. 803 (April 12, 1990).....	A-1
Decision of Connecticut Appellate Court in Jules Silver v. Terry E. Barth, 20 Conn. App. 827 (1990).....	A-2

Jules Silver v. Terry E. Barth, Et Al.

The named defendant's petition for certification for appeal from the Appellate Court, 20 Conn. App. 827, is denied.

John R. Williams, in support of the petition.

Irving H. Perlmutter, in opposition.

Jules Silver v. Terry E. Barth, Et Al.
(8374)

Spallone, O'Connell and Foti, Js.

Action to foreclose on a judgment lien on certain of the named defendant's real property, brought to the Superior Court in the judicial district of Fairfield and tried to the court, Zoarski, J.; judgment of foreclosure by sale, from which the named defendant appealed to this court. No error.

John R. Williams, with whom, on the brief, was Leslie R. Barth, for the appellant (named defendant).

Irving H. Perlmutter, for the appellee (plaintiff).

PER CURIAM. This appeal arises out of a foreclosure of a judgment lien against the named defendant Terry Barth. The defendant claims the court erred (1) in rendering judgment against the defendant without first holding a hearing in damages, (2) in rendering judgment without first acting on the defendant's motion to reopen a default and (3) in failing to open the default entered against the defendant.

After a plenary review of the record, transcripts and briefs, and after affording each claim of error the appropriate scope of review, we conclude that all claims are without merit. *Schiavone v. Schiavone*, 18 Conn. App. 825, 559 A.2d 1192 (1989).

There is no error.
